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Nos. 75-202, 75-214, and 75-215

# In the Supreme Court of the United States

OCTOBER TERM, 1975

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FERGUSON REORGANIZED SCHOOL DISTRICT R-2, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

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BERKELEY SCHOOL DISTRICT, ET AL., PETITIONERS

*v.*

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KINLOCH SCHOOL DISTRICT, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16)[1] is reported at 515 F.2d 1365. The opinion of the district court containing its initial findings of fact and conclusions of law (Pet. App. 16-35) is reported at 363 F. Supp. 739. The district court's findings of fact, conclusions of law, and judgment of January 9, 1975 (Pet. App. 36-44) are reported at 388 F. Supp. 1058.

## JURISDICTION

The judgment of the court of appeals was entered on May 14, 1975. The petition for a writ of certiorari in No. 75-202 was filed on August 7, 1975. The petitions in Nos. 75-214 and 75-215 were filed on August 9, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the court of appeals erred in approving the district court's order to implement an interdistrict desegregation plan, proposed and supported by the state and county boards of education, as a remedy for *de jure* segregation resulting from the State's intentional creation and maintenance of a small, all-black, financially impoverished, and educationally inadequate school district in a predominantly white area of St. Louis County.

[1] "Pet. App." refers to the Joint Appendix to the petitions for a writ of certiorari.



## STATEMENT

The United States filed this school desegregation suit on September 3, 1971, pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, and the Fourteenth Amendment, against the State of Missouri, the Missouri State Board of Education and its members, the Missouri State Commissioner of Education, the St. Louis County Board of Education and its members and Superintendent, and the three individual school districts of St. Louis County that are petitioners herein.[2] The complaint alleged that the state and county defendants had created and maintained the Kinloch School District as an all-black school district offering inferior educational opportunities and had failed and refused to take steps to provide equal educational opportunities to the black students of Kinloch, thereby denying them the equal protection of the law (Pet. App. 51-56).

After a hearing, the district court found that "the cumulative effect of the actions of the state and local defendants has been the creation, operation, support, and general supervision by the State of Missouri of a small school district which is unconstitutionally segregated and whose students are denied an equal educational opportunity" (Pet. App. 33). The court found that the state and county defendants have the authority to reorganize the school districts of Missouri and that they had excluded the Kinloch district

[2] The state and county defendants did not appeal from the decision of the district court.

from reorganization plans because of the race of its resident students. It ordered them "to develop and implement a plan which will 'achieve the greatest possible degree of actual desegregation, taking into account the practicalities of that situation.' *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. [33] at 37, * * *; *Brown* v. *Board of Education*, 349 U.S. 294" (Pet. App. 32, 35).

The plan which the state and county defendants developed, and concerning which the district court received extensive evidence, is the subject of these petitions.[3] The district court found the Revised Plan to be "the least disruptive alternative which is educationally sound, administratively feasible, and which promises to achieve at least the minimum amount of desegregation that is constitutionally required" (Pet. App. 37). With minor modifications, the court of appeals upheld the plan and held that the district court had the authority to implement its order by directing that provision be made for the levying of taxes essential to operate the school district and by accepting the recommendations of the state and

[3] Although nine different plans were considered by the state and county defendants before recommendation of the three-district plan, only two of the others are supported by any of the parties. Both Ferguson and Kinloch prefer a plan that would merge Kinloch with Berkeley and that was rejected by the state and county defendants because it offered little chance for meaningful desegregation. Berkeley, on the other hand, supports the merger of Kinloch with Ferguson, a plan that was rejected principally because its chances for financial success would be questionable. (Pet. App. 11-12.)



county officials concerning the make-up and selection of members to serve on the governing board of the new district (Pet. App. 12, 14, 15).

## ARGUMENT

1. Petitioners do not dispute the finding of the district court, as affirmed by the court of appeals, that the Kinloch School District was established and maintained by the State for racial reasons as an all-black school district offering markedly inferior educational opportunities. On the basis of that finding, the district court held that the State and its instrumentalities are constitutionally required to take affirmative, corrective action to eliminate the continuing vestiges of the dual system of schools in Missouri. *Brown* v. *Board of Education*, 347 U.S. 483; *Green* v. *School Board of New Kent County*, 391 U.S. 430; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1. The plan proposed and supported by those defendants was adopted and approved by the courts below as educationally sound, administratively feasible, and effective in achieving desegregation. The remedy was well within the discretion of the district court, which followed well-established legal principles, and further review is not warranted.

2. Petitioner Berkeley argues that it should not be included in the remedy, either because its original separation from Kinloch in 1937 was lawful since it predated this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, or because, during the

intervening period, it has changed from a 100 percent white to a 41 percent black school district. Berkeley argues that, were the old boundaries to be restored as if the 1937 split had not occurred, the old Kinloch school district would not be a unitary system today.[4]

But "[i]t would be sheer fantasy to say that the school districts in [St. Louis County] could be realigned today in the same manner that they were in [1937] and still comply with the constitutional mandate of *Brown I* and *II*. School district reorganization took place under the color of state law that then required segregated schools. Under these circumstances, when the resulting district lines drawn reflect a discriminatory pattern, *de jure* segregation is established." *Haney* v. *County Board of Education of Sevier County*, 410 F.2d 920, 924 (C.A. 8). Cf. *Wright* v. *Council of City of Emporia*, 407 U.S. 451; *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484.

"As with any equity case, the nature of the violation determines the scope of the remedy." *Swann* v.

[4] Prior to 1937 the present Kinloch district and most of the present Berkeley district formed a single district with schools segregated by state law. The district court found that the "splitting of Kinloch No. 18 into two districts by the incorporation of the City of Berkeley and formation of the Berkeley district had the effect of creating a school district for white students, Berkeley, and another school district for black students, Kinloch. Thus, the existing dualism was made a part of the school district structure mandated by state law, and, consequently, more difficult for the local school officials to correct" (Pet. App. 20).



*Board of Education*, 402 U.S. 1, 16. The Berkeley district played a major role in the constitutional violation creating Kinloch as an all-black district, and the district court properly included it as part of the relief necessary to remedy that violation.

3. Petitioner Ferguson, relying on *Milliken* v. *Bradley*, 418 U.S. 717, argues that it is not properly included in the reorganization because it was not involved in the original creation of Kinloch as an all-black district.[5] At issue in *Milliken* was "the validity of a remedy mandating cross-district or interdistrict consolidation to remedy a condition of segregation found to exist in only one district" (418 U.S. at 744). There was no finding that the long-established school district lines of the 53 outlying districts in that case had been either created or maintained for reasons of race. The Court there held that a cross-district remedy could be implemented only if it were shown (*id.* at 745):

> that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or

[5] Ferguson is supported in this argument by petitioner Kinloch, which believes that a remedy excluding Ferguson would be less burdensome on the black students and citizens of Kinloch. However, the evidence demonstrated that a Kinloch-Berkeley merger would be neither effective nor stable.

where district lines have been deliberately drawn on the basis of race.

The record in this case demonstrates the constitutional violation described by this Court in *Milliken*. The court of appeals concluded that "the district court's findings that Kinloch has been unlawfully maintained by each of the defendants, including Ferguson, for racially discriminatory reasons from 1937 to the present are not clearly erroneous" (Pet. App. 9).[6]

This case is similar to those cited by this Court in *Milliken* as examples of cases in which interdistrict remedies may be required because the school district lines conflict with the Fourteenth Amendment. *Haney* v. *County Board of Education of Sevier County*, 429 F.2d 364 (C.A. 8); *United States* v. *State of Texas*, 321 F. Supp. 1043 (E.D. Tex.), affirmed, 447 F.2d 441 (C.A. 5), certiorari denied, *sub nom. Edgar* v. *United States*, 404 U.S. 1016.[7]

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[6] The district court found, for example (Pet. App. 25):

> On numerous occasions, the county and state defendants have proposed reorganization plans for the school districts in St. Louis County, but have not included Kinloch district in such plans because it was all-black and the officials believed that the voters of surrounding school districts would reject consolidation with Kinloch for that reason. On the one occasion when consolidation of Kinloch with the Berkeley and Ferguson districts was recommended, the reorganization proposal was defeated by referendum.

[7] Petitioners' remaining contentions do not require extended discussion. The court of appeals held that the district court had the authority to implement its desegregation order by making provisions for the levying of taxes to support the operation of the school district and for representation on the governing board of the reorganized district. See *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 232-234. The measures taken by the district court, as modified and affirmed by the court of appeals, were in accordance with state law as recommended by the state and county defendants. They do not raise any substantial federal question that warrants this Court's review.



## CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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